COMMERCE—STATE REGULATION OF FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE.—A State statute provided that before a foreign corporation could maintain a suit in a State court it must first appoint a resident agent upon whom process could be served in any action against it. *Held,* the statute is unconstitutional when it affects a foreign corporation attempting to enforce payment for merchandise sold in interstate commerce. *Sioux Remedy Co.* v. *Cope,* 35 Sup. St. 57.

It may be conceded in a general way that a State may, subject to constitutional limitations, exclude any foreign corporations from its territory or impose any restriction, howsoever burdensome or discriminating, as a condition precedent to doing business within the State. *Security Co.* v. *Pruitt,* 202 U. S. 246. Thus it may restrict the right of a foreign corporation to sue in its courts. *Anglo-American Provision Co.* v. *Davis Provision Co.,* 191 U. S. 373. And it is well settled that a State may require a foreign corporation to appoint a resident agent upon whom process may be served before it can do business within its borders. *Lafayette Ins. Co.* v. *French,* 18 How. (U. S.) 404; *Utley* v. *Clark-Gradner Lode Co.,* 4 Col. 369. But a striking exception exists where the corporation is engaged in interstate commerce as in the principal case. *International Text Book Co.* v. *Pigg,* 217 U. S. 91. And such interstate sales are valid although the vendor, a foreign corporation, does not comply with the State statute. *Coit & Co.* v. *Sutton,* 102 Mich. 324, 60 N. W. 690, 25 L. R. A. 819; *Fifth Avenue Library Society* v. *Hastie,* 155 Mich. 56, 118 N. W. 727. For a State cannot burden interstate commerce, *Barrett* v. *New York,* 232 U. S. 14. Restrictions by a State on foreign corporations must not conflict with provisions of the Federal Constitution. See 3 COOK, CORPORATIONS, 7 ed., 2342. The denial of all remedy on a contract by a retroactive statute impairs its obligation. *West* v. *Sanson,* 44 Ga. 296. And while that question is not involved in the principal case, since the statute is not applied retroactively, it is clear that a statute so construed as to deny the right of a foreign corporation to recover on a valid interstate contract for the sale of merchandise is a burden on interstate commerce itself and hence is unconstitutional. *International Text Book Co.* v. *Pigg, supra.* State laws passed under the police power are not invalid because they remotely or incidentally impose restrictions on interstate commerce. *Logan & Bryan* v. *Postal, etc.,* 157 Fed. 570; *Atlantic Coast Line Ry. Co.* v. *Commonwealth,* 102 Va. 599, 46 S. E. 911. But cases so holding are easily distinguishable from the principal case, and it is settled that a law though passed under the police power will not be valid if it be a direct burden on interstate commerce. *Barrett* v. *New York, supra; Crutchen* v. *Kentucky,* 141 U. S. 47.

CONFLICT OF LAWS—RECOVERY UNDER WORKMEN'S COMPENSATION ACTS.—The deceased entered into a contract with the defendant company in New York for work to be done partly in New York and partly in New Jersey. While working in the latter state he was killed and an action was brought under the New Jersey Workmen's Compensation Act to recover for his death. It was contended that the liability was contrac-

tual and should be governed by the New York law where no compensation act was in force. *Held*, the liability is quasi-contractual and is governed by the law of the State where the contract was being performed at the time of the death. *Radiator Co.* v. *Rogge* (N. J.), 92 Atl. 85.

The only other adjudicated case on this point, involving conflict of laws, holds that the liability is purely contractural, since no default of any kind is necessary for a cause of action to arise. *Pensabene* v. *Auditore Co.*, 155 App. Div. 368, 140 N. Y. Supp. 266, 1134.

CRIMINAL LAW—CAPITAL OFFENSE—SEPARATION OF JURY.—During a trial on a capital charge, the jurors were permitted to sleep at a hotel, two in a room and behind locked doors, while the sheriff slept in the hall into which the rooms opened. *Held*, such separation is sufficient to invalidate the verdict. *State* v. *Walters* (La.), 66 South. 364.

While the law as to the effect of the separation of the jury in capital cases is conflicting, it is well settled both in this country and England that separation is not grounds for setting aside the verdict in trials of misdemeanors. *Bebee* v. *People*, 5 Hill (N. Y.) 32; *Prewitt* v. *State*, 65 Miss. 437, 4 South. 346; *Bowdoin* v. *State*, 113 Ga. 1150, 39 S. E. 478; *Rex* v. *Kinnear*, 2 Barn. & Ald. 462. And the present doctrine is the same, if no prejudice has resulted, where the accused is charged with a felony not punishable by death. *State* v. *Antoine*, 52 La. Ann. 488, 26 South. 1011; *Moss* v. *Commonwealth*, 107 Pa. St. 267. But the early rule was otherwise; and is still followed to some extent. *Commonwealth* v. *M'Caul*, 1 Va. Cas. 271; *Barnett* v. *State*, 50 Tex. Crim. App. 538, 99 S. W. 566. In capital cases the same general tendencies are manifested. The early rule regarded a separation as a reversible error; and such seems still to be the law in Louisiana. *McLean* v. *State*, 8 Mo. 153; *Woods* v. *State*, 43 Miss. 364; *State* v. *Moss*, 47 La. Ann. 1514, 18 South. 507; *Walters* v. *State*, *supra*. By statute, in one jurisdiction, separation has been made ground for a new trial, only when occurring after the jury has retired to deliberate. See *People* v. *Adams*, 143 Cal. 208, 76 Pac. 954, 101 Am. St. Rep. 92. Usually, however, the trial judge is regarded as having the power, at his discretion, to permit a separation prior to the submission of the case. *Stephens* v. *People*, 19 N. Y. 549; *State* v. *Williams*, 96 Minn. 351, 105 N. W. 265; *State* v. *Bates*, 87 S. C. 431, 69 S. E. 1075. *Contra*, *Wesley* v. *State*, 30 Tenn. 502. But in several States, statutes have been passed allowing such a power only when there is no objection to its exercise by either of the parties. See *State* v. *Smith*, 102 Iowa 656, 72 N. W. 279; also, *State* v. *Stockhammer*, 34 Wash. 262, 75 Pac. 810. It is now generally held that an improper separation will not justify a new trial, if the accused has not been prejudiced thereby; but the absence of prejudice must be affirmatively shown by the prosecution. *Gamble* v. *State*, 44 Fla. 429, 33 South. 471, 103 Am. St. Rep. 150, 60 L. R. A. 547, 1 Ann. Cas. 285; *Green* v. *State*, 59 Miss. 501; *State* v. *Cucuel*, 31 N. J. L. 249; *State* v. *Robinson*, 20 W. Va. 713; *Hempton* v. *State*, 111 Wis. 127, 86 N. W. 596. But if, during the separation, none of the jury is out of the custody or sight of an